

OFFICIAL OPINION NO. 08-01, Use of Tax Increment Financing Districts for the Development of Residential Property

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

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Kimberly A. Dorsett
Brown County State's Attorney
22 Court Street, Suite 2
Aberdeen, SD 57401

OFFICIAL OPINION NO. 08-01

Use of Tax Increment Financing Districts for the Development of Residential Property

Dear Ms. Dorsett:

You have requested an opinion from this Office based upon the following factual situation:

FACTS:

The City of Aberdeen is considering whether to grant two requests by local developers to create tax increment financing districts to help fund infrastructure placement, including road and curb and gutter work, in planned residential housing developments. Individual landowners would be able to purchase lots within the developments and build their own homes once the needed infrastructure is in place. Brown County is concerned about the potential tax implications should the requests be granted.

Based upon the above facts, you have requested an answer to the following question:

QUESTION:

Whether, pursuant to SDCL 11-9-42, the City of Aberdeen may establish the requested tax increment financing districts.

IN RE QUESTION:

SDCL 11-9-42 states that “[n]o tax increments shall be used for the construction of residential structures.”

The purpose of statutory construction is to ascertain the intent of a law from a review of the language expressed in the statute. Martinmaas V. Engleman, 2000 S.D. 85, ¶ 49, 612 N.W.2d 600, 611. The intent of a statute is determined from what the legislature said, rather than what the reviewer thinks it should have said. Benson v. State of South Dakota, 2006 S.D. 8, ¶ 71, 710 N.W.2d 131, 158 (quoting Martinmaas, 2000 S.D. 85, ¶ 49). “Words or phrases in a statute must be given their plain meaning and effect.” Martinmaas, 2000 S.D. 85, ¶ 49.

While neither “residential” nor “structure” is specifically defined in statute, the terms are not unclear or ambiguous. “Residential” is commonly defined as “used as a residence or by residents.” Merriam Webster’s New Collegiate Dictionary 996 (10th ed. 1993). “Structure” is defined as “something that is constructed.” Id. at 1167. The terms, when used together, plainly refer to something constructed for use as a residence.

It is my opinion that the plain and unambiguous language of SDCL 11-9-42 only prohibits the use of tax increment districts for the construction of residences, and the statute is not applicable to the construction of infrastructure in a residential development. A clear distinction exists between the two situations. A review of the legislative history of the statute supports this conclusion.

South Dakota’s tax increment financing provisions were originally enacted in 1978, and codified as SDCL ch. 11-9. 1978 S.D. Sess. Laws ch. 91. The original language of SDCL 11-9-42 stated that “[a] tax incremental district shall not be used for development of residential property.” In 1985 the Legislature passed Senate Bill 133, which was entitled “An Act to permit use of tax incremental district for development of residential property.” 1985 S.D. Sess. Laws ch. 102. The bill amended SDCL 11-9-42 to its current language. The Legislature’s intent to allow the use of tax increment financing districts to aid in the development of residential property – while prohibiting their use in the construction of residences – is clear.

According to the plain language of the statute my answer to your question is yes; the City of Aberdeen may establish the tax increment financing districts as proposed.

Very truly yours,

Larry Long
ATTORNEY GENERAL

LL/SB/lde